



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0166; FRL-9687-1]

Approval and Promulgation of Implementation Plans; State of Florida: New Source Review Prevention of Significant Deterioration: Nitrogen Oxides as a Precursor to Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Florida State Implementation Plan (SIP), submitted by the Florida Environmental Protection (FDEP), through the Division of Air Resource Management, to EPA in two separate SIP revisions on October 19, 2007, and July 1, 2011. These SIP revisions modify Florida's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program to address requirements promulgated in the 1997 8-hour ozone national ambient air quality standards (NAAQS) Implementation Rule NSR Update Phase II (hereafter referred to as the "Ozone Implementation NSR Update" or "Phase II Rule") recognizing nitrogen oxide (NO_x) as an ozone precursor, among other requirements. In addition, both SIP revisions make clarifying and corrective changes to Florida's regulations. EPA is approving both SIP revisions because the Agency has determined that the changes are in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0166. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9352; e-mail address: bradley.twunjala@epa.gov. For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562-9214; e-mail address: adams.yolanda@epa.gov. For information regarding 8-hour ozone NAAQS,

contact Ms. Jane Spann, Regulatory Development Section, at the same address above.

Telephone number: (404) 562-9029; e-mail address: spann.jane@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background**
- II. This Action**
- III. Final Action**
- IV. Statutory and Executive Order Reviews**

I. Background

EPA is taking final action to approve changes to the Florida SIP such that it is consistent with federal requirements for NSR permitting. On October 19, 2007, and July 1, 2011,¹ FDEP submitted revisions to EPA for approval into the Florida SIP to adopt federal requirements for NSR permitting promulgated in the Phase II Rule. Florida's October 19, 2007, SIP revision makes changes to the State's air quality regulations at Chapter 62-210, Florida Administrative Code (F.A.C.), *Stationary Sources – General Requirements, Section 200 – Definitions (rule 62-210.200)*, and Chapter 62-212, F.A.C., *Stationary Sources – Preconstruction Review, Section 400 - Prevention of Significant Deterioration (rule 62-210.400)*. Florida's July 1, 2011, SIP revision also makes changes at Chapter 62-210, F.A.C., to adopt PSD provisions promulgated in the Phase II Rule. Specifically, both SIP revisions amend the State's PSD regulations to

¹ Florida's July 1, 2011, SIP revision also makes additional changes to Chapters 62-210, 212 and 296, F.A.C. which will be addressed in a separate rulemaking.

establish that PSD permit applicants must identify NO_x as an ozone precursor as established in the Phase II Rule. Lastly, both SIP revisions make clarifying and corrective changes to Florida's rules at Chapters 62-210 and 62-212, F.A.C. Pursuant to section 110 of the CAA, EPA is approving these changes into the Florida SIP. EPA notes that Florida's October 19, 2007, SIP submission makes clarifying changes to rule 62-212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, because Florida's subsequent July 1, 2011, SIP revision made subsequent revisions to this public participation provision, EPA is not taking action to approve Florida's October 19, 2007, revision to rule 62-212.400(11), F.A.C. EPA is taking final action to approve the subsequent July 1, 2011, clarifying amendments to rule 62-212.400(11), F.A.C. into the Florida SIP.

On April 5, 2012, EPA published a proposed rulemaking to approve the aforementioned changes to Florida's NSR PSD program. *See* 77 FR 20582. Comments on the proposed rulemaking were due on or before May 7, 2012. No comments, adverse or otherwise, were received on EPA's April 5, 2012, proposed rulemaking. EPA is now taking final action to approve the changes to Florida's NSR PSD program as outlined in EPA's April 5, 2012, proposed rulemaking. A summary of the background for today's final actions is provided below.

a. Phase II Rule

With regard to the 1997 8-hour ozone NAAQS,² EPA's Phase II Rule, finalized on November 29, 2005, addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. *See* 70 FR 71612. The NSR permitting requirements established in the rule included the following provisions: recognizing NO_x as an ozone precursor for PSD purposes; changes to the nonattainment new source review (NNSR) rules establishing major stationary thresholds (marginal, moderate, serious, severe, and extreme nonattainment classifications) and significant emission rates for the 8-hour ozone, PM₁₀ and carbon monoxide NAAQS; revising the criteria for crediting emission reductions credits from operation shutdowns and curtailments as offsets, and changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment.

The Phase II Rule made changes to federal regulations at 40 CFR 51.165 and 51.166 (which govern the NNSR and PSD permitting programs respectively). Pursuant to these requirements, states were required to submit SIP revisions adopting the relevant federal requirements of the Phase II Rule (at 40 CFR 51.165 and 51.166) into their SIP no later than

² On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million – also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004, as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA. *See* 69 FR 23951.

June 15, 2007. Florida's October 19, 2007, and July 1, 2011, SIP revisions adopt the relevant provisions at 40 CFR 51.66 into the Florida SIP to be consistent with federal regulations for NSR PSD permitting requirements promulgated in the Phase II Rule with minor variations. States may meet the requirements of 40 CFR Part 51 and the Phase II Rules with alternative but equivalent regulations. As part of its analysis of Florida's October 19, 2007 and July 1, 2011, SIP revisions, EPA conducted a thorough review of the State's submittals including those provisions that differ from the federal rules (specifically the term "regulated NSR pollutant" at 40 CFR 51.166(b)(49)). EPA determined that Florida's term "PSD pollutant"³ is equivalent to the federal PSD definition "regulated NSR pollutant" and consistent with the program requirements for NSR, set forth at 40 CFR 51.166 related to the relevant revisions amended in the Phase II Rule. For more detail on Florida's equivalent PSD provisions for the definition of "regulated NSR pollutant" related to the Phase II Rule, please refer to EPA's proposed rulemaking at 77 FR 20584 (May 5, 2012). *See also* 73 FR 36435 (June 27, 2008).

b. Florida's Clarifying Changes and Corrections

Finally, Florida's October 19, 2007, and July 1, 2011, SIP revisions make clarifying changes and typographical corrections to portions of the State's NSR regulations at Chapter 62-

³ On June 27, 2008 (73 FR 36435), EPA took final action to approve a February 3, 2006, Florida SIP revision to adopt the provisions promulgated in the 2002 NSR Reform Rule. *See* 67 FR 80186. In the June 27, 2008, final rulemaking, EPA approved Florida's definition of "PSD Pollutant" as an equivalent to the federal term "regulated NSR pollutant" into the Florida SIP. As part of its February 3, 2006, SIP revision to adopt the NSR Reform provisions, Florida provided an equivalency demonstration that addressed how the State's definition of "PSD pollutant" was comparable to the federal term "regulated NSR pollutant." EPA's June 27, 2008, rulemaking also conditionally approved portions of Florida's PSD program that were not consistent with federal PSD regulations (including the definition for significant emissions rate). On June 17, 2009, in response to the conditional approval FDEP submitted a SIP revision to revise portions of its PSD program to be consistent with the federal PSD regulations. EPA took final action to approve this revision on April 12, 2011, which converted the State's PSD program from conditional to full approval. *See* 76 FR 20239.

210 and 212. Florida's October 19, 2007, SIP revisions make clarifying and/or corrective changes to rule 62-212.400, F.A.C including amending subsection entitled "General Prohibitions" at rule 62-212.400(1) by replacing the term "Prohibitions" with the term "Provisions"; and adding language at rule 62-212.400(1)(c) and 62-212.720 – *Actuals Plantwide Applicability Limits (PALs)*, to clarify that the term "Administrator" in 40 CFR 52.21 shall mean "Department" when applying the portions of the federal rule cited from within the FDEP rules.

In addition, Florida's July 1, 2011, SIP revision corrected an administrative error in the definition of "major modification" by replacing the term "PSD pollutant" with "regulated air pollutant" at rule 62-210.200(186)(d), F.A.C. The July 1, 2011, SIP revision also amends the public participation provision at 62-212.400(11), F.A.C., to clarify that the applicable public notice and participation provisions can be found at 62-210.350, F.A.C., and 62-110.106, F.A.C., to satisfy the federal public participation requirements. Florida's October 19, 2007, SIP submission also made changes to rule 62-212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, Florida's July 1, 2011, SIP revision made subsequent changes to the public participation provision at rule 62-212.400(11), F.A.C., and therefore, EPA is not taking action to approve Florida's October 19, 2007, revision to rule 62-212.400(11), F.A.C. EPA is instead approving the latest revision to rule 62-212.400(11), F.A.C., included in Florida's July 1, 2011, SIP revision.

II. This Action

Florida's October 19, 2007 and July 1, 2011, SIP revisions update the State's PSD definitions at Chapter 62-210, F.A.C. and provisions at Chapter 62-212, F.A.C. to adopt the NSR

requirements promulgated in the Phase II Rule (at 40 CFR 52.21) recognizing NO_x as an ozone precursor regarding: amendments to the definitions for “*major stationary source*” (40 CFR 52.21(b)(1)), “*major modification*” (40 CFR 52.21(b)(2)), “*significant*” (for significant emissions rate) (at 40 CFR 52.21(b)(23)(i)), “*regulated NSR pollutant*” (40 CFR 52.21(b)(50)), and the addition of a footnote at 40 CFR 52.21(i)(5)(i)(f) establishing the requirement for ambient air impact analysis. The Phase II rule also made other revisions to the NNSR program; however, only the addition of PSD amendments recognizing NO_x as an ozone precursor is relevant to this action.

Florida’s October 19, 2007, SIP revision, which became state effective July 16, 2007, revised definitions at rule 62-210.200, F.A.C., for “*major stationary source*,” “*significant emissions rate*” (or “*significant*” at 40 CFR 52.21(b)(23)(i)), and “*PSD pollutant*”⁴ (Florida’s equivalent to the federal term “*regulated NSR pollutant*” at 40 CFR 52.21 (b)(50)) by adding the term “nitrogen oxides” to recognize NO_x as an ozone precursor. The changes at rule 62-212.400, F.A.C., also addressed the inclusion of “nitrogen oxides” in the footnote at 62-212.400(3)(e)1.e., (as amended at 40 CFR 52.21 (i)(5)(i)(f)) regarding air quality level for ozone.⁵ Florida’s July 1, 2011, SIP revision, which became state effective October 12, 2008, revised the definition for “*major modification*” to be consistent with the definition promulgated in the Phase II Rule to include NO_x as an ozone precursor.

⁴ Florida defines “PSD Pollutant” at rule 62-210.200, F.A.C., as “any pollutant listed as having a significant emissions rate. Florida’s October 19, 2007, SIP revision (the subject of this action) amends the definition of “significant emissions rate” to adopt the Phase II Rule provisions by listing NO_x for the pollutant “ozone.” In doing so, Florida’s definition of “PSD pollutant” is also amended to establish NO_x as an ozone precursor.

⁵ The rule at 40 CFR 52.21(i)(5)(i)(f) establishes that there is no de minimis air quality level for ozone, however any source subject to PSD with a net increase of 100 tons per year or more of volatile organic compounds or NO_x is required to perform an ambient impact analysis.

As mentioned above, both Florida SIP submittals made clarifying changes and corrected typographical errors at Florida Chapter 62-210 and 212, F.A.C. Specifically Florida's October 19, 2007, SIP submission made changes to rule 62-212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, because Florida's July 1, 2011 SIP revision made subsequent changes 62-212.400(11), F.A.C., EPA is not approving the October 19, 2007 SIP revision to 62-212.400(11), F.A.C., into the Florida SIP. EPA is instead approving the latest revision to rule 62-212.400(11), F.A.C., included in Florida's July 1, 2011, SIP revision. EPA has determined that Florida's October 19, 2007, and July 1, 2011, SIP revisions, both meet the NSR PSD permitting requirements established in the Phase II Rule and are consistent with section 110 of the CAA.

III. Final Action

Pursuant to section 110 of the CAA, EPA is taking final action to approve Florida's October 19, 2007, and July 1, 2011, SIP revisions adopting federal PSD definitions and provisions amended in the Phase II Rule specifically recognizing NO_x as an ozone precursor into the Florida SIP. EPA is also taking final action to approve Florida's clarifying changes and correction to Florida's NSR rules. EPA is approving these revisions into the Florida SIP because they are consistent with section 110 of the CAA and EPA implementing NSR regulations.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

See CAA section 307(b)(2), 42 U.S.C. § 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements.

Date: June 5, 2012

A. Stanley Meiburg

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart K – Florida

2. Section 52.520 (c) is amended under Chapters 62-210 and 62-212 by revising the entries for “Section 62-210.200” and “Section 62-212.400” to read as follows:

§52.520 Identification of plan

* * * * *

(c) * * *

EPA-Approved Florida Regulations

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter 62-210 Stationary Source - General Requirements				
**	**	*	*	*
62-210.200	Definitions	10/12/08	[Insert date of publication in Federal Register] [Insert citation of publication]	This final rulemaking approves changes to the following definitions: “major modification,” “major stationary source,” “PSD pollutant” and “significant emissions rate.”
**	**	*	*	*
Chapter 62-212 Stationary Source – Preconstruction Review				
**	**	*	*	*
62-212.400	Prevention of Significant Deterioration	10/6/08	[Insert date of publication in Federal Register] [Insert citation of publication]	
**	**	*	*	*

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[FR Doc. 2012-14419 Filed 06/14/2012 at 8:45 am; Publication Date: 06/15/2012]